

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act -)	
Competitive Bidding)	
Narrowband PCS)	
)	
and)	
)	
Amendment of the Commission's)	
Rules to Establish New Narrowband)	GEN Docket No. 90-314
Personal Communication Services)	ET Docket No. 92-100

REPLY COMMENTS OF
MOBILE TELECOMMUNICATION TECHNOLOGIES CORP.

Mobile Telecommunication Technologies Corp. ("Mtel"), by its attorneys and pursuant to Section 1.415 and 1.419 of the Commission's rules, respectfully submits its Reply Comments in response to the Commission's Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking ("Further Notice") issued in the above captioned proceeding.^{1/}

I. INTRODUCTION

By these Reply Comments, Mtel expresses its continued support of the Commission's intent to provide meaningful opportunities for

^{1/} See, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, in PP Docket No. 93-253, Gen. Docket No. 90-314, and ET Docket No. 92-100, 59 Fed. Reg. 440558 (August 26, 1994), 9 FCC Rcd ____ (released August 17, 1994). Pursuant to the Further Notice, reply comments in this proceeding are due October 3, 1994. Thus, these Reply Comments are timely filed.

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designated entities to provide narrowband PCS service. Mtel also reasserts its firm opposition to certain Commission proposals that would increase the spectrum allocated on a nationwide basis and the redesignation of the BTA response channels into entrepreneurs' blocks. These two proposals are unnecessary to meet the Commission's goals and would actually harm unnecessarily existing narrowband PCS and paging licensees, and contrary to the intent of their supporters, inure to the detriment of the very group they were intended to assist.

Mtel's review of the Commission's files reveals that eleven parties filed comments in this proceeding directed to the reallocation of narrowband PCS spectrum. The comments evidence broad support for the position advocated by Mtel, and many other parties, that the Commission should abandon its proposals to provide for further allocation of nationwide narrowband PCS spectrum and to limit bidding for certain BTA response channels to those entities eligible to bid for entrepreneurs' block licenses.

II. DISCUSSION

A. Reallocation of Narrowband BTA Spectrum as Narrowband Nationwide Spectrum

In its Further Notice, the Commission proposed to redesignate two BTA licenses as regional licenses available only for entrepreneurs. Further Notice at para. 122. It also sought comment on other means to achieve larger geographic license sizes, such as designating the BTA licenses as nationwide licenses or by

maintaining the BTA designation, but allowing combinatorial bidding for the designated regions. Id.

In its Comments, Mtel submitted that any reallocation that increases the amount of narrowband spectrum assigned on a nationwide basis, either directly or through an enhanced opportunity for combinatorial bidding, would be totally inappropriate, unjustified and illegal.^{2/} There is substantial support for Mtel's position in the comments filed by other parties.

There is a widespread recognition that the proposal to allocate additional nationwide spectrum will in all likelihood cause more harm than good,^{3/} even with respect to the parties

^{2/} As Mtel explained in its comments, a substantive change in the allocation for nationwide narrowband PCS spectrum, after the auction for such spectrum has been held and just as licenses have been issued licenses have yet been issued, would be fundamentally unfair to high bidders at the nationwide narrowband PCS auction. An increase in nationwide narrowband spectrum at this time would reduce the value of the spectrum for which the high bidders just committed to acquire, would violate the effective agreement that exists between the Commission and the high bidders at the auction, and would also disrupt carefully crafted business plans of successful high bidders. Further, unless the public believes that there is an acceptable level of stability in the Commission's auction process, future investment will undoubtedly be discounted to reflect the risk inherent in the instability created by an ever-changing set of rules.

^{3/} As PCIA noted in its comments, the Commission should not retroactively create new nationwide narrowband PCS allocations because 1) if Channels 25 and 26 are reserved for designated entities, the creation of nationwide licenses would limit potential designated entity entry to just two opportunities rather than the nearly 100 to 1,000 opportunities now afforded by use of MTAs or BTAs and 2) the costs of obtaining and deploying nationwide service are not well matched to the resources available to designated entities. PCIA Comments, at 7.

which this was intended to help. See Mtel comments at 4-6. See also the comments of AirTouch Paging at 4, PCIA at 7, and Women of Wireless ("WOW") at 1^{4/} where it was recognized that such a reallocation will take away a genuine opportunity for smaller entities to become licensed on a BTA, MTA or regional basis, and provide only a hollow, theoretical opportunity to compete effectively at the nationwide level.^{5/}

Numerous commenters also opposed the Commission's proposal to reallocate BTA spectrum blocks on a nationwide basis due to a recognition that this proposal may cause some areas to not be served at all since construction requirements could be met by buildout in other areas.^{6/}

There is also substantial agreement with another point presented by Mtel in its comments: That it would be particularly premature for the Commission to base rule changes on an event as unique and complex as its nationwide narrowband PCS auction. See, e.g., Comments of PCIA at 2 where PCIA stated that it is inappropriate to use the nationwide narrowband PCS auctions as a

^{4/} WOW further suggested that this proposal will not have the desired effect of giving designated entities an opportunity to bid on larger and more valuable licenses and will eliminate the opportunity for small businesses and business owned by women and minorities to participate in narrowband PCS and discourage competition in local markets. See, Comments of Women of Wireless at 1 and 3.

^{5/} See, also, Comments of David J. Lieto at 3.

^{6/} See, Comments of San Juan Pacific Management at 3.

benchmark by which to judge the entire narrowband PCS service. AirTouch Paging also urged the Commission not to overreact to the results of the nationwide narrowband PCS auction because the forthcoming narrowband auctions will be different in several key respects including: (a) the lesser involvement of certain large incumbent firms with substantial resources; (b) the greater number of licenses that are available; (c) the lower absolute cost of individual licenses; (d) the greater amount of time that participants will have had to form consortia and to assemble financial resources; and (e) the increased credits available in subsequent rounds. See, Comments of AirTouch Paging at 5 and 6.

Only two parties were notable in urging rules changes that were opposed by Mtel and the majority of commenters: PageMart and American Paging. PageMart urged the Commission to eliminate what it characterized as the "inefficiencies" inherent in retaining the non-entrepreneur block BTA- and MTA-sized licenses by either: (a) aggregating these licenses into regional or national licenses (or some combination thereof); or (b) allowing companies to utilize combinatorial bidding for these licenses. See Comments of PageMart at 11. American Paging requested that the Commission expand the number of channel blocks for narrowband PCS service by channelizing the additional one megahertz of the spectrum reserve already allocated for narrowband PCS service and by establishing a schedule

for the licensing of those expanded channels.^{1/} See, Comments of American Paging at 2.

There is nothing in the record to support the positions of these parties. Rather, their only "basis" appears to be the lack of the parties' success at the Commission's recent auction. American Paging did not obtain any authorization and PageMart received only one. It appears that these parties are now attempting to have another bite at the nationwide apple by requesting the Commission to provide further nationwide spectrum and opportunity. The perceived business needs of selected applicants, neither of which is a designated entity, fall woefully short of the legitimate, compelling need that would warrant a change in the rules at this late date.

B. The Commission Should Not Reallocate BTA Response Channels Into Entrepreneur's Blocks.

The Commission also requested comment on whether some of the MTA and BTA response channels should be redesignated as larger license areas, and whether bidding for this spectrum should be limited only to those entities eligible to bid for entrepreneurs' block licenses. Further Notice at para. 122.

Mtel took no position regarding the redefinition of response channel market boundaries, noting that such redefinition would

^{1/} American Paging did not provide a need based study as a basis for its request rather it attempts to justify its request by observing that there is a substantial disparity between the number of CMRS paging operators and the number of narrowband PCS licenses in each market area. See American Paging Comments at 3.

bring response channels--which currently are the only component of the narrowband allocation without any nationwide character--into harmony with the remainder of the allocation.^{8/} Mtel did, however, oppose any fundamental change in the eligibility criteria for response channels at this eleventh hour, observing how such a radical change would undermine entirely the rationale for a response channel allocation. See Mtel comments at 12.

There was universal approval among the commenters addressing this issue that the Commission should not move any response channels into the entrepreneurs' blocks.^{9/} As PageNet explained in its opposition to the possible redesignation of the BTA response channels into entrepreneurs' blocks, such redesignation would not aid in the entry of designated entities into the traditional paging market place and would be unfair to existing paging licensees who have made, and partially implemented, business plans based upon the existing allocation. See, PageNet Comments at 4. The comments on this issue point out the shortcomings of this proposal and provide added reason for the Commission to dispose of it forthwith.

^{8/} Several commenters were in agreement that the MTA and BTA response channels should be redesignated as larger license areas. See, e.g., Comments of AirTouch Paging and PageMart.

^{9/} See, e.g. Comments of Mtel, AirTouch Paging, PageMart, PageNet, and PCIA.

III. CONCLUSION

Mtel commends the Commission for seeking ways to increase the opportunities for meaningful participation among small business and minority and female owned business in the deployment of narrowband PCS systems. Yet, for the reasons set forth above, Mtel submits that the public interest would best be served by the Commission abandoning the proposals to reallocate BTA or MTA narrowband PCS spectrum on a nationwide basis and to redesignate the BTA response channels as entrepreneurs' block licenses. The supposed benefits provided by the Commission's proposals are not genuine and adoption of the proposals would not further the Commission's goals of providing designated entities opportunities in the narrowband service.

As Mtel demonstrated in its comments, no showing that there is a need for additional nationwide narrowband PCS spectrum has been made. Indeed no comments filed in this proceeding even remotely suggested that there is a public interest need for further allocation of nationwide narrowband PCS spectrum. Under such circumstances, it would be wholly inappropriate to reallocate spectrum in order to have certain groups licensed so that spectrum without the spectrum having been shown to be needed for nationwide service.

In view of all of the above, Mtel renews its urging that the Commission give no further consideration to proposals to add to the

spectrum allocated for nationwide narrowband PCS or to change the eligibility criteria for response channels.

Respectfully submitted,

**MOBILE TELECOMMUNICATION
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October 3, 1994

CERTIFICATE OF SERVICE

I, Barbara Davis, a secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 3rd day of October, 1994, sent by first class U.S. mail copies of the foregoing "REPLY COMMENTS OF MOBILE TELECOMMUNICATION TECHNOLOGIES CORP." to the following:

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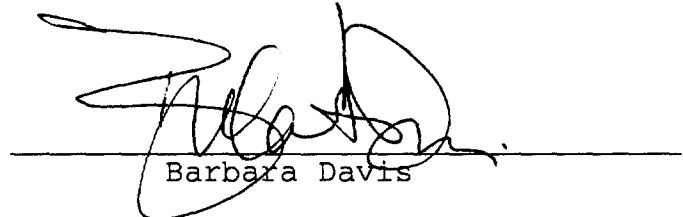
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